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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,573	05/03/2001	Cary Lee Bates	ROC920010064US1	6829
7590	04/20/2006			EXAMINER FISCHER, ANDREW J
Gero G. McClellan Thomason, Moser & Patterson, L.L.P. Suite 1500 3040 Post Oak Boulevard Houston, TX 77056-6582			ART UNIT 3627	PAPER NUMBER
DATE MAILED: 04/20/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/848,573	BATES ET AL.	
	Examiner	Art Unit	
	Andrew J. Fischer	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 February 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7,10,13-15,17,18,23,24,26,28,29,31,33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7,10,13-15,17,18,23,24,26,28,29,31,33 and 34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Acknowledgements

1. Applicants' preliminary amendment filed January 7, 2005 is acknowledged and has been entered. Accordingly, claims remain pending.
2. This Office Action, the "Second Final Office Action" is given Paper No. 20060417.
3. All references in this Office Action to the capitalized versions of "Applicants" refers specifically the Applicants of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner (s) generally.
4. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologizes for these errors.

Claim Rejections - 35 USC §102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-7, 10, 13-15, 17, 18, 23, 24, 26, 28, 29, 31, 33 and 34 are rejected under 35 U.S.C. §102(e) as being anticipated by Baric (U.S. 6,527,176 B2). Baric discloses the claimed invention including a receiving at a vending machine a purchase order for the item (the request is received at the primary dispenser **10** whereby the primary dispenser **10** is a fuel dispenser that also dispenses vending machine items [C7, L18-21]. The secondary dispenser **20** is a vending machine.

Claim Rejections - 35 USC §103

7. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-7, 10, 13-15, 17, 18, 23, 24, 26, 28, 29, 31, 33 and 34 are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Baric in view of Peters (U.S. 5,769,269) and Walker (U.S. 6,397,193 B1) (“Walker ‘193).¹ It is the Examiner’s principle position that the claims are anticipated because communicating to the another vending machine available products is inherent.

However if not inherent, Peters directly disclose a vending machine that automatically senses when it is ‘out-of-stock’ and automatically updates the menu selections for the user, based

upon product availability. This real time communication prevents users from paying for items which are out-of-stock.

Moreover, Walker teaches determining whether price adjustments are necessary for the purpose of reward customers who buy multiple products.

So if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Baric as taught by Peters and Walker '193 to include making available to customer only those products that were in inventory and adjusting prices. Such a modification would have helped prevent users from paying for items that were out of stock by preventing the users from being able to select the item in the first place.

Moreover, such a modification would have provided customers with a price discount thereby rewarding customers who buy multiple products.

9. The Examiner maintains his position that Applicants are not their own lexicographer. This issue will not be further addressed by the Examiner.

Response to Arguments

10. Applicants' arguments with respect to the pending claims have been considered but are not persuasive.

11. Applicants argue that Baric does not disclose "receiving, at the vending machine in the network of vending machines, a purchase order fro the item . . ." The Examiner respectfully disagrees since, under the broadest reasonable interpretation, the secondary dispenser receives the electronic purchase order (an order that the customer is purchasing items) from the primary

¹ See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of

dispenser 10. The primary dispenser 10 sends the order to the secondary dispenser 20. Under the broadest reasonable interpretation, the primary dispenser 10 is also a “vending machine.”

12. Applicants also argue that Baric does not disclose “receiving at the vending machine, a response to the request indicated of whether the item was available at at least one other vending machine” The Examiner respectfully disagrees since Baric directly teaches checking if a vend item is available for purchase because Baric discloses the inventory of the dispenser is updated and the status of that dispenser is also transmitted to controller 30 while sending alert signals to the central facility 50 when out of stock. [C5, ~L26-30.] Baric also directly discloses monitoring “supply information.” [C5, ~L30-40.]

13. Regarding Applicants’ discussion of “configured to” language, it is the Examiner’s position that “configured to” is functional language whereby the prior need only be ‘capable of’ performing the claimed function for anticipation and that while such functional recitations must be considered, they need not be directly disclosed.

Conclusion

14. This action is made final. Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

A shortened statutory period for reply to this final action is set to expire three months from the mailing date of this action. In the event a first reply is filed within two months of the mailing date of this final action and the advisory action is not mailed until after the end of the three-month shortened statutory period, then the shortened statutory period will expire on the

inherency is present in the anticipation rejection.

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date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. §1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than six months from the mailing date of this Second Final Office Action.

15. References considered pertinent to Applicants' disclosure are listed on form PTO-892.

All references listed on form PTO-892 are cited in their entirety.

16. Unless expressly noted otherwise by the Examiner or other USPTO official, the following four (4) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action *and* any future office action(s), communication(s), or other correspondence provided by the USPTO: MPEP citations to Chapter 2300 are from the MPEP 8th Edition, Rev. 4, October 2005; citations to Chapters 200-900, 1200-1400, and 1700-1900, 2100, 2200, 2600 are from the MPEP 8th Edition, Rev. 3, August 2005. MPEP citations to Chapters 100, 1000, 1100, 1500, 2000, 2500, and 2700 are from the MPEP 8th Edition, Rev. 2, May 2004. MPEP citations to Chapters 1600, 2300, 2400 are from MPEP 8th Edition, August 2001.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

18. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Andrew J. Fischer whose telephone number is (571) 272-6779.

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19. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrew J Fischer
Primary Examiner
Art Unit 3627

AJF
April 17, 2006